

REMARKS

Claims 1-16 are pending.

Claims 1-16 are subject to restriction and/or election requirement.

Claim 5 has been amended to replace "glycerol monostearate" with "glyceryl triacetate".

Support for the amendment is found at paragraph [0035] of US Publication 20050196355.

ELECTION/RESTRICTIONS

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9 and 16, drawn to composition comprising water-insoluble polymer, disintegration facilitator, classified in class 424, subclass 70.16.

II. Claims 10-15, drawn to multilayer film comprising at least two layers wherein at least one layer comprises composition comprising water-insoluble polymer, disintegration facilitator, classified in class 424, subclass 443.

The Examiner alleges that, "Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product, and the species are patentably distinct. " The Examiner proceeds to explain why she considers the Inventions I and II "independent or distinct" as well as why she believes she believes "there would a serious search and examination burden if restriction were not required...."

Additionally the Examiner requires selection between patentably distinct species within each of the following genera:

- "disintegration facilitator";
- "topical or systemic active agent";
- "water insoluble polymer";
- "plasticizer";
- "water insoluble particulate"; and
- "whitening agent".

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Applicants respectfully traverse the Examiner's restriction requirement and election of species requirements.

Applicants believe that the Examiner has made an arbitrary separation of the inventions based on an erroneous search classification. The Examiner cited classification for Invention I relates to drug, bio-affecting and body treating compositions which have topical non-therapeutic utility for treating the hair or scalp of the living body; e.g., grooming or adorning aids, tonics, rinses, etc. containing either a natural or synthetic polymer, which polymer may be solid, wax, or liquid, and is not acting in the composition as a surfactant, specifically poly(meth)acrylic acid, salt, or copolymer thereof. Importantly, however, nowhere does the present application teach or even suggest a use for the hair and scalp. The Examiner cited classification for Invention II relates to drug, bio-affecting and body treating compositions which possess some form, or a specific dimension or configuration, or its components are associated as plural layers or parts in which the special physical form contains a coated, impregnated of two layer web, sheet, a filament or is a coated or impregnated bandage or dressing. Applicants submit the "burden" described by the Examiner is self-imposed as there is no reason for the Examiner to search hair or scalp care art. A search for "plural layers or parts in which the special physical form contains a coated, impregnated of two layer web, sheet, a filament or is a coated or impregnated bandage or dressing" would necessarily uncover and, therefore, include a search of all potential "polymers" used in forming such web, sheet or filament layers, thus, imposing no additional searching burden on the PTO.

Moreover, a search of the above listed genera should be the same regardless of the specific species elected, thus, imposing no serious searching burden on the PTO. Accordingly, Applicants respectfully submit that the Examiner's restriction requirement and election of species requirement under 35 USC §121 are improper and respectfully request that the requirement be withdrawn.

Notwithstanding the aforementioned comments, should the restriction be maintained, Applicants provisionally elect, with traverse, Invention II as well as following species election:

- insoluble particulates as the "disintegration facilitator";
- whitening agents as the "topical or systemic active agent";
- shellac as the "water insoluble polymer";
- glycerol esters as the "plasticizer";

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silica as the "water insoluble particulate"; and
peroxides as the "whitening agent".

Conclusion

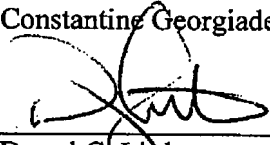
In view of the foregoing remarks, it is respectfully requested that the Examiner withdraw his requirement for an election of species and allow the generic claims to be prosecuted on the merits in the present application. In the event that the Examiner's restriction and/or election of species requirement is made final, Applicants affirm the provisional elections made above. Claims 1-3 and 6-16 read on the elected species.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the number listed below.

Date

10/16/07

Respectfully submitted,
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